

Translation

PATENT COOPERATION TREATY

PCT/FR2003/002239



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference CP 60737PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/FR2003/002239	International filing date (day/month/year) 15 juillet 2003 (15.07.2003)	Priority date (day/month/year) 18 juillet 2002 (18.07.2002)
International Patent Classification (IPC) or national classification and IPC A23L 1/30		
Applicant BARRY CALLEBAUT A.G.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 13 février 2004 (13.02.2004)	Date of completion of this report 28 October 2004 (28.10.2004)
Name and mailing address of the IPEA/EP Facsimile No.	Authorized officer Telephone No.

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I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages 1-12, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages _____, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages 1-11, filed with the letter of 29 July 2004 (29.07.2004)
- ☒ the drawings:
pages 1, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	3-9	YES
	Claims	1, 2, 10, 11	NO
Inventive step (IS)	Claims		YES
	Claims	1-11	NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

2. Citations and explanations

1. The amendments to the claims, submitted with the letter dated 29.7.2004, are admissible (PCT Article 34(2)(b)) (claims 1 and 2 as originally filed).

2. Reference is made to the following documents:

D1: EP-A-0 029 153 (NESTLE SA) 27 May 1981 (1981-05-27)

D2: US-A-2 203 643 (ALBERT MUSER) 4 June 1940
(1940-06-04)

D4: WO-A-98 13133 (DUFFETT WILLIAM; AGGLOMERATION TECHNOLOGY LTD (GB)) 2 April 1998 (1998-04-02) & EP-A-0 934 110 11 August 1999 (1999-08-11) cited in the application.

3. Claim 1 is not considered to be a "use"-type claim for the following reason:

A claim directed to a substance or to a composition for a particularly use should be understood to indicate a substance or a composition suitable for a particular use. If the known product was in a form such that it indeed became suitable for the use indicated, even if it had not been intended for such a use, the claim would lose its

character of novelty (PCT Guidelines chapter 5.12).
Indeed, cocoa butter (e.g. D4) is in a form such that it is indeed suitable for use as a gelatine substitution product.

Therefore, the subject matter of claims 1, 2, 10 and 11 is not novel (PCT Article 33(2)).

4. Document D1 relates to a method for making a food base that is instantaneously dispersible in water from an amylaceous material and fat (palm fat). Said food base (a roux) is used to bind dry soups and sauces in the same way as gelatine. This food base is a finished or semi-finished product that can be incorporated in mixtures for soups or sauces to bind said soups and sauces during the preparation thereof via the addition of boiling water to the dry mixtures (without forming lumps) (claims 1 and 2, examples 1-4, page 1, line 4 to page 2, line 31, page 5, lines 21-30, page 7, lines 3-29). It is obvious for a person skilled in the art to use cocoa butter with a corresponding effect. Consequently, the subject matter of claim 7 does not involve an inventive step in the light of D1 (PCT Article 33(3)).

Document D2 relates to a food thickener containing a polysaccharide (starch) and a fat. First, the polysaccharide is added (with optional heating) followed by the fat. The product is used for preparing sauces, food preparations and pastries (claims 1-3 and 8, examples 1-13, page 1, column 1, lines 11-35 and 47, to column 2, lines 11 and 38-55, page 2, column 1, line 1 to column 2, line 11, page 5, column 1, lines 13-56). It is obvious for a person skilled in the art to use cocoa butter with a corresponding effect. Consequently, the subject matter of claims 6-9 does not involve an inventive step in the light

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of D2 (PCT Article 33(3)).

Dependent claims 3 to 5 do not contain any feature which, in combination with those of any of the claims to which they refer, defines subject matter that meets the PCT requirements with respect to inventive step for the following reasons:

The features of dependent claim 3 have already been used for the same purpose in D1. It is obvious for a person skilled in the art to apply said features with a corresponding effect. Consequently, the subject matter of claim 3 does not involve an inventive step.

Claims 4 and 5 define a slight alteration to the invention described in claim 1; said alteration forms part of standard practice for a person skilled in the art and the resulting advantages are easily foreseeable. Consequently, the subject matter of claims 4 and 5 does not involve an inventive step either.